

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RUBY D. JONES, f/k/a)	4:07CV3281
RUBY D. WHITE,)	
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
UNION PACIFIC RAILROAD)	
COMPANY,)	
)	
Defendant.)	

This matter is before the court on Defendant's motion for summary judgment (filing [58](#)), as well as Plaintiff's motion to strike a footnote contained in Defendant's summary judgment brief (filing [63](#)), amended motion to strike the footnote (filing [69](#)), and motion for leave to file an amended brief in opposition to Defendant's motion for summary judgment should the court find Plaintiff's original brief deficient (filing [72](#)). After careful consideration of the briefs of the parties and all evidentiary materials submitted in support of the parties' positions, the court has concluded that factual disputes remain, and as a consequence, the motion for summary judgment shall be denied.

Furthermore, the remainder of Plaintiff's motions shall be denied. The motion to strike (filing [63](#)) and amended motion to strike (filing [69](#)) seek to strike a footnote in Defendant's brief that refers to deposition testimony that Plaintiff claims is "irrelevant," "immaterial," and "impertinent" since the referenced testimony addresses a claim that has now been dismissed from this case. These motions shall be denied because to the extent the footnote contains or refers to irrelevant material, the court did not consider it.

Plaintiff's motion for leave to file an amended brief (filing [72](#)) was filed in response to Defendant's argument that Plaintiff has not adequately complied with NECivR 56.1 because, in controverting Defendant's statement of facts, Plaintiff refers the reader to specific paragraphs of a separate "disputed fact" section in Plaintiff's brief. While Plaintiff's approach is cumbersome and unusual, Plaintiff has "address[ed] each numbered paragraph in the movant's statement," and where Plaintiff disputes Defendant's alleged facts, Plaintiff's brief "contain[s] pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line)" in response. NECivR 56.1(b)(1). Hence, Plaintiff need not submit additional briefing, and the motion for leave to do so shall be denied.

IT IS ORDERED:

1. Defendant's motion for summary judgment (filing [58](#)) is denied;
2. Plaintiff's motion to strike (filing [63](#)), amended motion to strike (filing [69](#)), and motion for leave to file an amended brief (filing [72](#)) are denied.

December 18, 2008.

BY THE COURT:
s/ *Richard G. Kopf*
United States District Judge